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**ARIZONA DEPARTMENT OF ECONOMIC SECURITY**

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Janet Napolitano  
**Governor**

**Division of Developmental Disabilities**  
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Tracy L. Wareing  
**Director**

March 29, 2007

Dear Qualified Vendor:

As you are aware, the recent implementation of the voter approved initiative, Proposition 202, raised the minimum wage in Arizona to \$6.75 per hour as of January 1, 2007. As a result, questions have been raised about its impact on providers of employment services operating under a special minimum wage certification from the federal Department of Labor, Section 525, Part 14 (c) of the Fair Labor Standards Act and the consumers they currently serve. In response to public inquiries, the Industrial Commission of Arizona (ICA) issued an initial statement indicating "...employers who participate in sheltered work center programs will not be penalized for not paying the new wage..." and furthermore that any future rule or "...notice would be prospective in nature and that it would not apply its interpretation retroactively." As a result, some vendors have chosen to conduct business as usual, some have chosen to provide work at the new minimum wage and others have implemented non-paid work training.

In follow-up to its initial statement, the Industrial Commission of Arizona staff issued two drafts of proposed clarification as to the impact of the new law on persons with disabilities, including opportunity for public input in either written form or verbally at a Commission meeting held on March 22, 2007. The most current proposal identifies three distinct relationships for persons involved in work and/or work-related activities: employee; trainee; and service recipient. Per the proposal, only an "employee" would be impacted by the Arizona minimum wage act. Trainees and service recipients as defined by the Commission would not be covered by the act. The Division understands that the Commission will be accepting public comment on its proposal through March 29, 2007. After considering the public input, the Commission will take formal action and issue its "substantive policy statement" regarding the applicability of the act to work performed by individuals with a disability. This policy statement will ultimately be proposed as a permanent rule.

As questions and concerns continue to be raised, the Division wanted to take this opportunity to reiterate its commitment to minimizing the disruption in services for both consumers and providers of employment and work-related services and supports. To that end, the Division is extending the option for Division-funded vocational programs that choose not to provide paid work opportunities to people with developmental disabilities to provide non-paid work activities and training related to generic work skills and appropriate work habits, per the service specifications under Center-Based Employment. This option is available for up to an additional 90 days, effective April 1 through June 30, 2007 pending final clarification on the impact of the minimum wage act on persons engaged in employment-related services. These services should be provided and billed as Center-Based Employment. The Division will assist vendors in expediting an amendment to a provider's Qualified Vendor agreement if this is not a service currently offered. The Division will also take into consideration the impact of the act on a program's ability to meet the service outcomes

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delineated in the Center-Based program specifications. Six-Month Reports will be due by July 31, 2007 for the time period of January 1 through June 30, 2007; however, the Division will *not* hold vendors accountable for performance outcomes related to the availability of paid work and consumer productivity not met as a result of issues related to the minimum wage act.

Should a current vendor of employment services and supports make the decision to terminate its existing program(s), we ask that you notify the District Program Manager immediately to allow planning for the transitioning of the impacted program participants. As the Division believes that consumers should remain in a structured environment with a day that promotes each person's current vocational and employment goals, we do not plan to increase Day Treatment programs nor do we think it would be in the best interest of consumers to remain at home without employment services. Any request for these options will require an Individual Support Plan team meeting and review of the consumer's current needs and interests.

For additional information relative to amending your Qualified Vendor agreement, please contact the Division's Contract Office at 602-542-6874. For questions related to employment service specifications, please contact your District Employment Specialist.

We have also enclosed a letter to consumers and families that we are requesting you hand out to your program participants. It is being mailed as well, but this will expedite their receipt of this critical information.

Thank you for your continuing commitment to the provision of quality employment services and supports for individuals with developmental disabilities.

Sincerely,



Barbara Brent  
Assistant Director

cc: Al Nieto  
Debra Peterson  
District Program Managers  
Linda Flores